Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) Nos. 283-86/2005, 5672/2002, 3649/2003, 4257/2003, 4328/2003, 5865/2003, 19795-97/2004 and 14088-93/2005

Date of Decision: 12.10.2007

WP(C) No.283-86/2005

#Govt. of NCT of Delhi & Ors. ....Petitioners
! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

Versus

$Sh. Jodha Ram .....Respondents
^ Through Mr.Gyan Prakash

WP(C) No.5672/2002

#Sh. Ram Narain Singh & Ors. ....Petitioners
! Through: Ms. Meenu Mainee

Versus

$Union of India & Ors. .....Respondents
! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary for respondent Nos.2 to 4

WP(C) No.3649/2003

#Sh. P.L. Tandon & Ors. ....Petitioners
! Through: Mr. Gyan Prakash

Versus

$Govt. of NCT of Delhi & Ors. .....Respondents
! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

WP(C) No.4257/2003

#Govt. of NCT of Delhi & Ors. ....Petitioners

! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

Versus

$Sh. Gajraj Singh and & Ors. .....Respondents
! Through: Mr. D.R. Gupta

WP(C) No.4328/2003
#Govt. of NCT of Delhi & Ors. ....Petitioners
! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

Versus

$Sh. Inderjit Singh & Ors. .....Respondents
! Through: Mr. Gyan Prakash

WP(C) No.5865/2003
#Sh. Sukh Darshan Lal .....Petitioner
! Through: Mr. Gyan Prakash

Versus

$Govt. of NCT of Delhi & Ors. ....Respondents
^ Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

WP(C) No.19795-97/2004
#Govt. of NCT of Delhi & Ors. ....Petitioners
! Through: Ms.Avnish Ahlawat with Ms.Latika Chaudhary

Versus

$Ram Sevak Pal ....Respondent
^ Through: Mr. Gyan Prakash

AND

WP(C) No.14088-93/2005
#Govt. of NCT of Delhi & Ors. ....Petitioners

! Through: Ms.Avnish Ahlawat
with Ms.Latika Chaudhary

Versus

$Sh. B.S. Tyagi ....Respondent
^ Through: Mr. Gyan Prakash

CORAM :-
***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE VIPIN SANGHI

1.Whether Reporters of Local papers may be allowed to see the Judgment?
2.To be referred to the Reporter or not?
3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.
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1. Not only the question of law, which arises for determination in these cases, is common, the said question arises out of same set of facts in each case. That was precisely the reason for hearing these petitions together which we propose to dispose of by this common judgment. For the sake of convenience, facts in WP(C) No.283-86/2005 are taken note of, which was otherwise also treated as the lead case.
2. Before proceeding to mention the facts in the said writ petition, we may point out that all these cases relate to the teachers, who are working in different schools managed and run by the Govt. of NCT of Delhi. These teachers were given the initial appointment as Trained Graduate Teachers

(TGTs) and were promoted as Post Graduate Teachers (PGTs) on officiating basis in early 1980s and in any case, before 1.1.1986. They continued to work as PGTs on officiating basis till their retirement, which occurred much after 1.1.1986. Pay scales of the teachers were revised with effect from 1.1.1986 after accepting the recommendations of 4th Central Pay Commission. Three scales were introduced for TGTs, namely, Entry Scale, Senior Scale and Selection Scale. Senior Scale was to be given after completion of 12 years of service as TGT and selection grade after 24 years of service as TGT. As on 1.1.1986, since these teachers were working as PGTs only on officiating basis holding lien over the substantive post of TGT, they were given the Senior Scale and/or Selection Scale in the post of TGT on completion of 12 years/24 years of service. Much after their retirement, orders dated 17.11.1986 were passed regularising their services as PGT, though retrospectively with effect from a date anterior to 1.1.1986. This gave rise to a dispute regarding entitlement of selection grade of these teachers as TGTs. According to the Government, since such teachers, who were given ad hoc promotion as PGTs, were regularised as PGT before

1.1.1986, they ceased to hold the post of TGT and, therefore, were not entitled to the benefit of Selection Scale as on 1.1.1986 as TGT, which post they were not holding as on that date. These teachers, on the other hand, contended that such a regularisation took place much after their retirement in the year 1986 and otherwise as on 1.1.1986, they were working on officiating basis as PGT with lien over the post of TGT, they were entitled to the selection grade scale as TGT with the acceptance of the recommendation of the 4th Pay Commission. Contention of these teachers has found favour with the Tribunal in all cases, except in three cases and the Tribunal, allowing those OAs, has directed the Government to fix the pay accordingly. In three cases, however, different view is taken and the OAs are dismissed. In those three cases petitioners are the said teachers and in other cases, Government has filed the writ petitions. In fact, the two cases, which were decided earlier, were *Sukh Darshan Lal Vs. Govt. of NCT of Delhi and Ors.* wherein the OA was dismissed and *Inderjeet Singh and Ors. Vs. Govt. of NCT of Delhi and Ors.*, wherein the OA was allowed. When the OA filed by Sh.Ram Sevak Pal and other connected OAs came

up for hearing before the Division Bench, it observed a dissonance between the two orders passed in the aforesaid two cases and referred the related issue to the Full Bench. The Full Bench answered the said reference vide its judgment dated 13.7.2004 holding that a teacher, who had not been confirmed in the promoted post of PGT/Vice-Principal, was entitled to selection grade of lower post. These OAs and other OAs were thereafter allowed by the Division Benches of the Tribunal on the basis of opinion expressed by the Full Bench.

3. Since we have enumerated above the exact nature of dispute, which is the subject-matter of these petitions, we now take note of the relevant facts. For better understanding of the dispute, we take up the relevant dates of appointment and promotion etc. of Sh.Ram Sevak Pal, who is the respondent in WP(C) No.19795-97/2004.

10.3.1960	-	Date of appointment as TGT
1.3.1966	-	Date of promotion as TGT
5.9.1971	-	Given selection grade as TGT
13.9.1983	-	Promoted as PTG on officiating basis
30.11.1991	-	Retired while working as PGT on officiating basis
17.6.1996	-	orders of regularisation of Sh.Ram Sevak Pal as PGT issued giving regularisation with effect

from 16.1.1984.

12.8.1987 - Govt. of India issued instructions regarding grant of three pay scales for teachers of all categories, viz., Entry Scale, Senior Scale and Selection Scale.

Category of School Teachers	Revised Pay Scales
a) **Primary School Teachers**	Rs.1200-2040
Senior Scale (After 12 Years)	Rs.1400-2600
Selection Scale (After 12 years in Senior Scale and attainment of qualifications laid down for TGTs)	Rs.1640-2900
b) **Trained Graduate Teachers/Headmasters of Primary School**.	Rs.1400-2600
Senior Scale (After 12 years)	Rs.1640-2900
Selection Scale (After 12 Years in Senior Scale and attainment of qualifications laid down for PGTs)	Rs.2000-3500
c) **Post Graduate Teachers/Headmasters of Middle School.**	Rs.1640-2900
Senior Scale (After 12 years)	Rs.2000-3500
Selection Scale (After 12 years in senior scale)	Rs.2200-4000
d) **Vice-Principal/Headmasters of Secondary School**	Rs.2000-3500
Senior Scale (After 12 years)	Rs.2200-4000

4. As by the time the aforesaid notification regarding revision of pay scales of school teachers with effect from 1.1.1986 was issued, Sh. Ram Sevak Pal was holding the post of PGT only on officiating basis and that of TGT on substantive basis, the promotion to the post of PGT on officiating basis

was not to be considered while applying the revision in the pay scales. In so far as TGT is concerned, he was given the selection grade on 5.9.1971. Therefore, corresponding selection grade of Rs.2,000-3,500/- on revision was to be given to him. This was denied vide impugned order dated 9.7.2002 on the ground that vide orders dated 17.6.1996 he had been promoted to the post of PGT with effect from 16.1.1984 on regular basis and, therefore, as on 1.1.1986 he was not working as TGT but stood promoted as PGT, though this event took place much after his retirement. It will also be necessary to take note of the facts of the case of Sh. Jodha Ram, another applicant who had filed the OA which matter was referred to the Full Bench of the Tribunal along with the case of Sh. Ram Sevak Pal. This would enable us to understand the judgment of the Full Bench better. The dates of appointment and promotions in respect Sh.Jodha Ram are as follows:-

8.9.1955	-	Date of appointment as TGT
18.7.1962	-	Date of promotion as PGT
1.3.1975	-	Granted selection grade of PGT
9.1.1986	-	Promoted as Vice-Principal on ad hoc basis.
31.12.1990	-	Retired while working as ad hoc Principal.

5. Since as on 1.1.1986 he was holding the substantive post

of PGT, he demanded the selection scale of Rs.2,000-4,000 on completion of 12 years of service from 1.3.1975, i.e. 1.3.1987. He had earlier filed OA in which direction was given to consider his claim and pass speaking order. However, the petitioner refused to grant him the said scale vide orders dated 10.8.2001, 5.6.2000 and 14.1.2002.

6. The Full Bench, to which the matter was referred, in its detailed judgment dated 13.7.2004 considered the impact of giving regular promotion from back date, albeit after the retirement of these persons. It noted that this was done as a consequence of the judgment of the Supreme Court in the case of *K.C. Lakhanpal & Ors. Vs. Delhi Administration & Ors.*, (1994) Supp. 2 SCR 637 keeping in view the following directions passed in the said judgment on 16.8.1994 by the Supreme Court:-

> "(4) Those incumbents who have since retired or have died after retirement are found entitled to any benefit by our decision the same shall be considered by the respondent Nos.1 to 4 and the benefits, if any, be worked out and paid to their nominees or legal representatives as the case may be."

7. The Full Bench noted the aforesaid directions were given with a view to extend benefit to the retired employees by passing the order of regular promotion in the case of

respondents herein from retrospective date. The petitioners herein were taking away the said benefit which could not be the intention behind the orders of the Supreme Court. The Full Bench examined the orders giving them regular promotion. It opined that the regular promotion does not mean that they were confirmed in the post of PGT/Vice- Principal, inasmuch as, the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey the idea of the nature of tenure of appointments as held by the Supreme Court in the case of *B.N. Nagarajan and Ors. Vs. State of Karnataka and Ors.*, (1979) 4 SCC 507. On that basis, the Full Bench of the Tribunal observed as under:-

> "15. If a person is promoted on ad hoc basis as PGT or Vice Principal, it does not automatically mean that he has been confirmed or holds a lien on that post. Before issue of DOPT O.M. dated 28.3.1988 relating to simplified confirmation procedure effective from 1.4.1988, the confirmation was linked with availability of permanent posts. The factual position is that the applicants have not been confirmed as PGTs or Vice Principals as the case may be. The claim of selection grade in the cadre of TGT/PGT arises much before the issue of simplified procedure of DOP&T O.M. dated 28.3.1988 is only prospective in nature. It cannot be applied to deny benefits which were available to the

applicants prior to issue of this O.M. Therefore, the decision of the committee as per minutes dated 6.6.1997 was in order.

16. In the case of Triveni Shankar Saxena Vs. State of UP & Ors. (1992 SC (l&s) 440), the question for consideration was whether termination of the applicant from the post of Consolidator was justified or not. It was also for consideration whether he should have been repatriated to the post of Lekhpal from where he was selected as Consolidator. It was held that the appellant in that case could not be repatriated to the post of Lekhpal as he did not hold the post in substantive capacity on permanent basis. He held the post of Lekhpal on temporary basis as was apparent from the appointment letter.

17. In the case of Nirmal Chandra Bhattacharjee and Ors. Vs. Union of India and Ors. (1992 SCC (L&S) 236), it has been held an employee cannot be made to suffer on account of intervening events.

18. In the case of Pritam Singh Vs. Union of India & Ors. (Chandigarh Bench of this Tribunal) in O.A. No.369 CH of 1987 dated 20.3.1989 it is held that the applicant holding lien in PCS promoted to IAS on probation could not be deprived of the benefits of PCS benefits by retrospective confirmation order. The Hon'ble Supreme Court in the case of Ali M.K. & Ors. Vs. State of Kerala and Ors. (SLJ 2003(2) 44) have observed that unless the person concerned is confirmed in new service, he has a lien in former service. The Hon'ble Delhi High Court as per their decision dated 20.9.1973 in the case of Nand Kishore Vs. Lt. Governor of Delhi and Ors. (CMP No. 994 of 1972), while deciding similar matters of teachers

> held that order of confirmation issued despite protest of the petitioners even before issuance of the said order smack of legal malafide. It has also been observed that confirmation can be made with retrospective effect as such order of confirmation is normally for the benefit of the official concerned."

8. Thus, the Tribunal answered the reference by concluding that a teacher, who had not been **confirmed** in the promoted post of Principal/Vice-Principal was entitled to selection grade of lower post and mere **regular** promotion with retrospective date would not dis-entitle such persons from benefits of substantive post of Teacher/Principal/Vice-Principal held by them. Based on the said answer to the reference, the Division Benches of the Tribunal have passed separate orders in all these cases granting the respondents/teachers the benefit of selection grade etc.

9. Ms. Avinsh Ahlawat, learned counsel appearing for the petitioners, submitted that clarification was given by the Government vide O.M. dated 5.5.2000 to the effect that as per the instructions dated 12.8.1987, senior scale was to be granted after 12 years of service and period of 12 years was necessary consideration for being eligible for consideration for grant of the said scale and these respondents had not completed 12 years of service as

TGT/PGT etc. as the case may be, and they stood promoted to the next higher post, may be on ad hoc basis and, therefore, were not eligible for grant of selection scale. She also submitted that orders dated 10.8.2001 were passed to the same effect when the matter of Sh. Jodha Ram was considered after the directions dated 25.5.2001 of the Tribunal in the first OA filed by him. She also relied upon another judgment of the Division Bench of the Tribunal dated 18.5.2002 passed in CP No.221/2000 in OA No.2386/1999 entitled *Gajraj Singh and Others Vs. Govt. of NCT of Delhi* whereby the contempt proceedings were dropped. She reiterated that since these persons had already been promoted to the higher scale retrospectively before they could complete 12 years of service, they were not entitled to the selection grade as per orders dated 12.8.1987.

10. Learned counsel for the respondents, on the other hand, submitted that the Full Bench of the Tribunal had considered the matter in right perspective which needed no interference. They also referred to O.M. dated 28.3.1988, which was taken note of by the Full Bench as well wherein it was decided that all those persons, who were promoted

on a higher post before completing 12 years of service but not confirmed, were entitled to selection scale in the lower post which they were still holding on substantive basis. Therefore, submission was that it was because of the reason that even when there was promotion on regular basis of a particular person, he would continue to hold lien on the lower post till he is confirmed on the higher post and in support he referred to the following judgments:-

a) *B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors.* (1979(4 SCC 507.

b) *Triveni Shankar Saxena Vs. State of U.P. & Ors.* 1992 Suppl. (1) SCC 524.

c) *Pritam Singh, IAS Vs. Union of India & Ors.* 1990 (2) SLJ 58 (CAT, Chandigarh).

d) *Lt. Governor of Delhi & Ors. Vs. Nand Kishore* 1974 (2) SLR 892.

11. It was also submitted that judgments of CAT were implemented and higher scale given to as many as 357 persons vide orders dated 28.10.1998 and the petitioners have deprived the respondents only. Reference was also made to Fundamental Rule 26, which was relevant for the purpose of pay fixation on revision.

12. On consideration of the respective submissions of the parties, we are of the view that the conclusion arrived at by the Full Bench of the learned Tribunal on the basis of which orders are passed by the Division Benches of the Tribunal granting benefit to these respondents is legal and in conformity with the law laid down by the Hon'ble Supreme Court. The Tribunal is right in commenting upon the circumstances in which directions were given by the Supreme Court in K.C. Lakhanpal's case (supra) the purpose of which was to give benefits to other similarly situated persons and not to take away from them the benefits which these teachers were otherwise entitled to.

13. That apart, the distinction drawn by the learned Tribunal between promotion on regular basis and confirmation is valid and is to be kept in mind. Not only such a distinction is drawn by the Apex Court in various judgments, as noted by the Full Bench in the portion extracted above, this is the view which was taken by the petitioners themselves in their own O.M. dated 29.10.1998, which was issued on the basis of minutes dated 6.6.1997. Minutes of the meeting dated 6.6.1997 are placed on record. These are of a meeting

which was convened by the Principal Secretary (Education) and all other concerned officers were also present. In these minutes, it was specifically recorded that prior to 1.4.1988 every government servant had a lien on his lower post till he was confirmed on the higher post and, therefore, Teachers/Vice-Principals officiating on higher post were entitled to selection scale in their substantive post. The decision taken was as under:-

> "It was, therefore, decided that prior to 1.4.88, all those PGTs who were promoted as Vice-Principal before their completing 12 years in the Old Selection grade even promoted on regular basis but not confirmed on that post and were officiating as Vice-Principals were entitled to the Selection Scale of their substantive post i.e. P.G.T."

14. Thus, it was decided to give selection grade even to those promoted on regular basis but not confirmed on that post. It was also decided that such PGTs, who were working as Vice-Principals, were also entitled for selection grade of PGT. On the basis of this decision Order No.1 dated 29.10.1998, which was issued "with the prior approval of the Competent Authority", *inter alia,* provided:-

> i) That they have completed 12 Years of service in Selection Grade/Senior Scale of Rs.2000-3500 and are/were working as Vice-Principals on the dated of grant of

> Selection Scale. The service of 12 years is to be counted on the lines as service is counted for the grant of an increment. The service rendered on foreign assignment/deputation and EOL & dies non shall not qualify for the same and subject to no compliance of the terms and conditions of foreign assignment is pending."

15. Along with this order, list of 357 persons is given who are given the pay scale in the substantive post they were holding though this order clearly mentions that in case of any discrepancy, the matter be referred to E-II Branch of Directorate of Education, no such discrepancy is pointed out till date and this includes many persons who are similarly situated as the respondents herein. Even when the counsel for the petitioner was specifically confronted with the aforesaid, she had no answer to it. Learned counsel for the respondents also produced communication dated 9.3.1988 addressed by the Ministry of Human Resource Development (Education Department), Government of India to the Directorate of Education of the petitioner on the subject of "Revision of Pay Scales for School Teacher" wherein it is clarified that those who are already in the pre-revised selection grade would be placed in the senior scale and as they were already screened for suitability, no further screening would be required. It

further mentioned that "Accordingly, it is clarified that for the purpose of counting service in the newly created senior grade, the entire period of service rendered in the erstwhile selection grade may be taken into account." Our attention was also drawn to Circular dated 28.3.1988 to the Director of Education, Delhi, wherein clarifications to certain points raised were answered. Clarification to question No.8 would be relevant for our purposes, which reads as under:-

(8) The teachers availing Selection grade since 5.9.71 onward have now been placed in senior scale as per clarification at Sr. No. 2 of letter dated 3.11.87. Their eligibility for Selection grade in the revised order dated 12.8.87 will be determined from the date, such teachers are getting benefit of Selection grade or 12 years will be counted from 1.1.86. In case a teacher has been awarded Selection Grade from 1.1.1986 and promoted in higher post on officiating basis, whether he will be entitled for Senior scale of the post in which he/she is promoted taking into consideration his/her length of service in the lower grade.	It may be stated that vide Point No.2 of clarification given in our letter No. F.5-180/86-UT. I dated 3.11.87, it has been clarified that those who are already in the pre-revised selection scale will be placed in the senior scale. It was further stated that since they were screened for suitability for the earlier selection grade, no further screening would be required. Accordingly, it is clarified that for the purpose of counting service in the newly created senior grade, the entire period of service rendered in the erstwhile selection grade may be taken into account.

16. For all these reasons we are of the opinion that orders passed by the Tribunal directing benefit of senior

scale/selection scale given to the respondents herein do not call for any interference. Since all these respondents/Teachers had retired from service long ago and they have been deprived of the relevant pay scales for quite some time, the petitioners are directed to complete the exercise of granting the higher pay scale and give the arrears so calculated to all these respondents within three months from today.

17. With these directions, the writ petitions preferred by the petitioners/Govt. of NCT of Delhi, viz. WP(C) No.283-86/2005, WP(C) No.4257/2003, WP(C) No.4328/2003, WP(C) No.19795-97/2004, WP(C) No.14088-93/2005 being devoid of merit are hereby dismissed and the writ petitions filed by the teachers, viz. WP(C) No.5672/2002, WP(C) No.3649/2003 and WP(C) No.5865/2003 are allowed.

(A.K. SIKRI)
JUDGE

October 12, 2007
HP.

(VIPIN SANGHI)
JUDGE